IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on briefs April 25, 2006

STATE OF TENNESSEE, ex rel. LINDA OAKES v. CHARLES J. WALDO

Appeal from the Probate and Family Court for Cumberland County
No. 13405 Steven C. Douglas, Judge

No. E2005-02394-COA-R3-CV - FILED MAY 30, 2006

This is a post-divorce case addressing the subject of child support. Charles J. Waldo ("Father"), the obligor parent, appeals the trial court's order, which found him in contempt for willful failure to pay child support and required him to pay an arrearage of $36,243 to the Central Child Support Receipting Unit of the Department of Human Services ("DHS"). Father argues that the trial court should have ordered the arrearage to be deposited in certificates of deposit titled jointly in the name of Father and the child for whose benefit the support had been ordered. His underlying argument is that that the arrearage should go to the child, not the obligee parent, Linda Oakes ("Mother"). We affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate and Family Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Howard L. Upchurch, Pikeville, Tennessee, for the appellant, Charles J. Waldo.

Paul G. Summers, Attorney General and Reporter, and Juan G. Villaseñor, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee *ex rel.* Linda Oakes.

OPINION

I.

The relevant facts are these. In October, 2001, the trial court ordered Father to pay Mother $3,200 per month for the support of the parties' two minor children, Charly A. Waldo (DOB:

November 10, 1984) and Randy W. Waldo (DOB: January 22, 1987).[1] In May, 2003, Charly was emancipated. On June 24, 2003, Father filed a *pro se* petition seeking a modification of his child support obligation in light of Charly's emancipation. After a hearing date was set and reset, Father moved for a continuance. No further immediate action was taken with respect to Father's petition. Father ceased paying child support, choosing instead to place funds into various certificates of deposit at the First National Bank of Pikeville. The funds, totaling $29,400 plus accrued interest as of September 30, 2005, were titled jointly in the name of Father and Randy, the parties' remaining minor child.

Father filed a second petition to modify in September, 2004. Along with seeking a termination of his support obligation as to Charly, the second petition requested that the trial court "make appropriate arrangements for the support and maintenance of the parties' minor child," Randy. Thereafter, the State of Tennessee ("the State"), on behalf of Mother,[2] filed a contempt petition against Father based upon his refusal and failure to pay child support. The trial court subsequently held a hearing to resolve the issues raised in Father's two petitions to modify and the State's petition for contempt. We have no transcript of the hearing and no statement of the evidence, but the record before us does contain the trial court's detailed findings of fact. Those findings, in pertinent part, are as follows:

> That it is stipulated to by the parties that from June 1, 2003 through October 2004, the Present child support guidelines applied to the parties income would result in [Father] having a child support obligation of $2,100.00 per month in this cause.[3]
>
> * * *
>
> That for the time period of June 1, 2002 through October 31, 2004, [Father], is in arrears $33,400.00, for child support in this cause, to which [Mother] is entitled to statutory annual interest of 12%.

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[1] For ease of reference, we will refer to the children by their first names, *i.e.*, "Charly" and "Randy." No disrespect is intended by this informal approach.

[2] The brief of the State of Tennessee *ex rel.* Linda Oakes states the following:

> The State provided child support enforcement services to Ms. Oakes pursuant to Title IV-D of the Social Security Act, 42 U.S.C. §§ 651, *et seq.*, and Tenn. Code Ann. § 71-3-124(c). The Attorney General's Office is also providing its services on appeal pursuant to the same authorities, by agreement with the Tennessee Department of Human Services ("DHS"), and pursuant to Tenn. Code Ann. § 8-6-109(b)(2).

[3] As is apparent from the start date, *i.e.*, June 1, 2003, this reduced support amount is due to Charly's emancipation in May, 2003.

> That [Mother] owes child support to [Father] for the time period of January 2005 through May 2005[4] when the minor child, Randy William Waldo, graduated High School in the sum[] of $497.00 which reflects the current child support guidelines applied to her imputed income of $669.45 per month and [Father's] income of $20,833.33 per month ($250,000.00 per year).
>
> That [Father] has willfully failed to pay all or a portion of 17 Child support payments in the cause between the dates of June 2002, through October 31, 2004, based upon evidence presented beyond a reasonable doubt, and is, therefore found to be guilty of seventeen (17) separate instances of contempt.

In light of these findings, the trial court ordered

> [t]hat [Father] shall report to the Cumberland County Jail [w]ithin fourteen days (14) of entry of this order, there to serve the 170 day jail sentence setout herein, unless [Father] does, within fourteen (14) days of this order, pay into the Central Child Support Receipting Unit, . . ., the sum of $36,243.00 which represents child support owed of $33,400.00 and interest of $3,340.00 less the $497.00 which [Mother] owes [Father] for child support for the time period of January 1, 2005, through May 2005.

From this judgment, Father appeals.

II.

Father states his sole issue on appeal as follows:

> Whether the trial court erred in directing [Father] to pay his child support arrearage directly to [Mother] rather than to the parties' child, Randy W. Waldo, for whose benefit the support was established, through the transfer and disbursement of those funds deposited by [Father] in joint accounts in the name of [Father] and this child at the First National Bank of Pikeville.

[4] Toward the end of 2004, Mother relocated to the state of Georgia. Randy apparently decided to move in with Father so he could remain in Tennessee and graduate from high school here. Randy resided with Father until his graduation and emancipation in May, 2005.

III.

The issue presented in this case – whether the trial court erred in ordering that the child support arrearage be paid to Mother instead of to the child – presents a question of law. Hence, our review is under "a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." ***S. Constructors, Inc. v. Loudon County Bd. of Educ.***, 58 S.W.3d 706, 710 (Tenn. 2001).

IV.

Father does not question the trial court's determination that he owes an arrearage in the amount of $36,243. However, he urges us to hold that the trial court erred by not directing him "to pay the arrearage directly to [Randy] rather than [Mother] (or the Child Support Receipting Unit for [Mother])." The basis of Father's argument is that it is in Randy's best interest for Randy, not Mother, to personally receive the money. The State rebuts Father's argument by asserting that Tenn. Code Ann. § 36-5-101(c)(2)(A)(ii) (2005) requires that the arrearage be paid to DHS's Central Child Support Receipting Unit for transmittal to Mother.

Tenn. Code Ann. § 36-5-101(c)(2)(A)(ii) provides the following:

> In all Title IV-D child support cases in which payment of child support is to be made by income assignment, or otherwise, . . ., *the court shall only order that the support payments be made to the central collection and disbursement unit* pursuant to § 36-5-116. No agreement by the parties in a parenting plan, . . ., or any other agreement of the parties or order of the court, . . ., shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, . . ., whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services, for child support payments required by the support order that are made in contravention of such requirements; provided, however, that the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(Emphasis added). The trial court, by directing Father to pay the arrearage into the "Central Child Support Receipting Unit," was acting in full compliance with the above statute. A court order stating otherwise would have been in contravention of the statute, and therefore, "void and of no effect." ***Id.***

Child support payments are clearly intended for the benefit of the child. ***Rutledge v. Barrett***, 802 S.W.2d 604, 607 (Tenn. 1991). However, it is well-established that child support payments are typically paid to the custodial parent. ***Id.*** ("While a child support payment goes, directly or indirectly, to the custodial parent or guardian of a child, the purpose of the payment is to fulfill the non-custodial parent's obligation to contribute to the *child's* support.") (citing ***Hester v. Hester***, 443 S.W.2d 28, 31 (1968) (emphasis in ***Rutledge***)).

Father first tries to support his argument by claiming that Mother "did not offer any evidence regarding the extent of expenses incurred by [Mother] during the seventeen month period that this arrearage obligation accumulated." Such proof was not necessary. The record reflects that Mother was entitled to court-ordered child support. This is all that is required to trigger Father's obligation to pay the arrearage to her. Child support cannot be modified retroactively. Tenn. Code Ann. § 36-5-101(f)(1) (2005). Father's argument on this point assumes that the issue of his obligation is still a matter subject to resolution. It is not.

Father next asserts that "[d]isbursement of child support arrearages to children rather than parents is not unknown nor unheard of in this State." He cites ***Tallent v. Cates***, 45 S.W.3d 556 (Tenn. Ct. App. 2000), for support of this proposition. In ***Tallent***, the trial court ordered the father to pay an arrearage at a rate of $200 a month to the mother, $50 a month to the child, and $50 a month to the State of Tennessee for reimbursement of Aid to Families with Dependent Children ("AFDC") payments. ***Id.*** at 559-60. In ***Tallent***, no issue was raised as to the propriety of the division of the arrearage. ***Tallent*** certainly does not expressly state that a child support arrearage payment to a child is appropriate. Father has failed to cite any applicable authority supporting his assertion that the arrearage should go directly to Randy in the form of jointly-held certificates of deposit. Furthermore, we know of none. The trial court's order directing Father to pay the arrearage to the Central Child Support Receipting Unit was proper.

V.

The judgment of the trial court is affirmed. This case is remanded to the trial court for enforcement of that court's judgment and for the collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to the appellant, Charles J. Waldo.

CHARLES D. SUSANO, JR., JUDGE